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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,416	01/08/2002	Michael Joseph Calderaro	AUS920010789US1	1319
40412	7590	06/30/2006	EXAMINER	
IBM CORPORATION- AUSTIN (JVL), C/O VAN LEEUWEN & VAN LEEUWEN PO BOX 90609 AUSTIN, TX 78709-0609			KRISCIUNAS, LINDA MARY	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/042,416	CALDERARO ET AL.	
	Examiner	Art Unit	
	Linda Krisciunas	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 June 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-9,11-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4-9,11-15 and 17-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>June 15, 2006</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final Office Action in response to the applicant's amendment filed June 15, 2006. Claims 3, 10 and 16 are cancelled. Claims 1-2, 4, 8-9, 11, 14-15, and 17 are amended. Claims 1-2, 4-9, 11-15 and 17-20 are pending.

The Examiner notes the receipt of the terminal disclaimer to obviate the double patenting rejection.

Response to Amendment

2. The Examiner has fully considered the applicant's amendments which required further considered and/or search and has addressed them in the subsequent art rejection below.

Response to Arguments

3. The Examiner has fully considered the applicant's arguments and they are deemed not persuasive. OPM addresses the issue of disagreeing with an evaluation and submitting it for rework in the section titled "RIF Appeals and Grievances" on page 17 where if the employee believes the reduction in force (RIF) was performed in error an appeal can be filed. The RIF encompasses all the elements of claims 1-2 as previously noted in the First Office action dated March 23, 2006, including evaluating employees according to skills and selecting those at the lowest standing for release first. The appeal process indicates that the RIF is sent back for a rework of sorts to determine if there truly was an error. In addition, it is common in the field of evaluations for an employee evaluation to require a manager's signature, which would inherently not be signed unless the manager agrees with the evaluation. Therefore, the concept of

disagreeing with an evaluation and returning it for editing is well known by one of ordinary skill in the art, as this would constitute disagreeing with an evaluation and requesting rework.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on June 15, 2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 2, 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims list "data records with a high end and a low end", but it is unclear as to what this high end and low end are referring to as "high end" is not present in the specification, ie by what means are they high or low?

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4-8, 11-14 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Office of Personnel Management (OPM), Restructuring Information Handbook Module 3, Reduction in Force (June 1998), referred to herein after as OPM.

As per claims 1, 8 and 14, OPM teaches receiving a skill group identifier (See page 11, section 5 where the competitive levels are based upon similarity of grade, duties, qualifications etc. Each of these would be a skill group identifier.); retrieving data records for a plurality of employees, wherein each data record includes the skill group identifier and an evaluation (See page 14, section d, where performance ratings are provided. A performance rating is equivalent to an evaluation as it performs an identical function in substantially the same manner with effectively the same results); comparing the retrieved data records based upon the corresponding evaluations (See page 12, section 6, where the name of each employee is listed on the retention register in order of standing. The employees are compared according to the retention value, where they are subsequently listed in order.); and identifying one or more surplus employees based upon the comparisons (See page 15, section 8, where employees are released from the retention register in the inverse order of their standing (ie lowest standing is released first) for reduction in force. If the employee is not retained then they are deemed to be equivalent to being surplus as it performs an identical function in substantially the same manner with effectively the same results.); analyzing a selected evaluation prior to the comparing (page 17 where the employee reads the evaluation which constitutes

analyzing it); disagreeing with the selected evaluation; and sending a rework request to a creator of the selected evaluation in response to disagreeing with the selected evaluation (page 17, where the appeal request represents a rework request and where if the employee believes the reduction in force (RIF) was performed in error an appeal can be filed. The RIF encompasses all the elements of claims 1-2 as previously noted in the First Office action dated March 23, 2006, including evaluating employees according to skills and selecting those at the lowest standing for release first. The appeal process indicates that the RIF is sent back for a rework of sorts to determine if there truly was an error. In addition, it is common in the field of evaluations for an employee evaluation to require a manager's signature, which would inherently not be signed unless the manager agrees with the evaluation. Therefore, the concept of disagreeing with an evaluation and returning it for editing is well known by one of ordinary skill in the art, as this would constitute disagreeing with an evaluation and requesting rework.)

As per claims 4, 11 and 17, OPM teaches identifying the selected evaluation as a low skill evaluation (See page 11, section 5, where the evaluations cover all aspects including qualifications and a rating is provided for each category); and checking whether the employee's data record includes one or more positive employment factors, wherein at least one of the positive employment factors is selected from the group consisting of a top contributor indicator, a stock option award, a significant salary increase, a critical skill identifier, and a promotion identifier (See page 14, section d, where the past performance reviews are evaluated and various credits are given for

various levels of performance. "Outstanding" performances meriting more credit than "exceeds fully successful" etc. where these would constitute a top contributor indicator.).

As per claims 5, 12 and 18, OPM teaches assessing the surplus employees' data records with one or more corporate surplus guidelines (The OPM Restructuring Information Handbook is to be used as a guide when reduction in workforce situations arise); assessing each of the surplus employees' evaluations to other employee evaluations having the same skill group (See page 11, section 5 where the competitive levels are based upon similarity of grade, duties, qualifications etc. Each of these would be a skill group identifier and given a retention value. See page 12, section 6, where the name of each employee is listed on the retention register in order of standing. The employees are compared according to the retention value, where they are subsequently listed in order.); and rejecting one or more of the surplus employee identifications based upon one of the assessments (See page 10, section f, where in lieu of reduction in force (RIF) the agency may reassign an employee to another position. This is equivalent to rejecting one as a surplus employee as it performs an identical function in substantially the same manner with substantially the same results.).

As per claims 6 and 19, OPM teaches reviewing each of the surplus employees' data records using one or more applicable laws (See page 9, section 1: OPM guidelines are part of the Code of Federal Regulations 5 CFR 351 which is based upon federal law.). OPM does not explicitly teach determining an additional compensation amount for one or more of the surplus employees based on the applicable laws; and adding the additional compensation to a severance amount corresponding to the surplus

employees. Official notice is taken that it is old and well known to provide a severance package to employees that are separated from a company which would include any separate monies associated with years of service etc. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a severance package to separated employees to provide a means of compensating the employee for past service.

As per claims 7, 13 and 20, OPM teaches comparing the surplus employees' data records with data records corresponding to non-surplus employees (See page 12, section 6, where the name of each employee is listed on the retention register in order of standing. The employees are compared according to the retention value, where they are subsequently listed in order. See page 15, section 8, where employees are released from the retention register in the inverse order of their standing (ie lowest standing is released first) for reduction in force. If the employee is not retained then they are deemed to be equivalent to being surplus as it performs an identical function in substantially the same manner with substantially the same results); creating one or more statistical analyses based on the comparison, wherein the statistical analyses include one or more protected employment factors (See page 13 where tenure groups are made and veteran's preference subgroups are made); assessing the statistical analyses using one or more applicable laws (See page 13 where the Dual Compensation Act of 1964 is used to qualify veteran status); and modifying the group of identified surplus employees based on the assessment (See page 13 where there is an assessment made as to whether or not the employee qualifies for protection under the

veteran status if they meet the listed criteria of combat-incurred disability or injury, years of service, length of service etc).

9. Claims 2, 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Office of Personnel Management (OPM), Restructuring Information Handbook Module 3, Reduction in Force (June 1998), referred to herein after as OPM, in view of "Corporate Downsizing: The Effect of Implementation strategies on Firm Performance" by Robert Nixon, Doctor of Philosophy thesis at Texas A&M University, December 1995, hereinafter referred to as Nixon.

As per claims 2, 9 and 15, OPM teaches sorting the retrieved data records based on the corresponding evaluations (See page 12, section 6, where the name of each employee is listed on the retention register in order of standing. The names are sorted according to retention value.), the sorting resulting in a list of sorted data records with a high end and a low end (See page 15, section 8, where employees are released from the retention register in the inverse order of their standing (ie lowest standing is released first, where the identification of a low end means that the other end of the list is the high end) for reduction in force. If the employee is not retained then they are deemed to be equivalent to being surplus as it performs an identical function in substantially the same manner with substantially the same results); selecting the surplus number of employees from the low end of the list of sorted data records (See page 15, section 8, where employees are released from the retention register in the inverse order of their standing (ie lowest standing is released first) for reduction in force. If the employee is not retained then they are deemed to be equivalent to being surplus

as it performs an identical function in substantially the same manner with substantially the same results). OPM does not explicitly teach using a percentage to determine the surplus number. Nixon teaches that it is known to receive a surplus percentage corresponding to the skill group; and selecting a number of the sorted employee data records by applying the surplus percentage to the low end of the list of sorted employee data records (page 36, where the low reallocation strategy requires all units to reduce personnel by an equal amount of a uniform percent. If a company is laying people off, they will let go the people that no longer have the skills the company needs or those that have the least amount of skill as would be obvious to one of ordinary skill in the art and as already noted in OPM where those at the low end of the list are released first.). Nixon is an analogous art as it also teaches about reduction in workforce. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the reduction in force system of OPM with the percentage feature of Nixon to provide a means for selecting the number of people for release.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following art also teaches about employee evaluations: ANPAS System (11 pages) from www.webarchive.org, April 2001; "Job Performance would decide raise", by Blackwell, Richmond Times-Dispatch, May 7, 1997; "Self appraisal in performance evaluation: development versus evaluation" by Campbell et al, The Academy of Management Review, April 1988; "An Evaluation of Organizational Due Process in the Resolution of Employee/Employer Conflict", by Aram et al, The Academy of Management Review, April 1981; and "Total Quality Management and performance appraisal: an experimental study of process versus results and group versus individual approaches" by Lam et al, Journal of Organizational Behavior, 1999.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Krisciunas whose telephone number is 571-272-6931. The examiner can normally be reached on Monday through Friday, 6:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LMK

LMK
June 23, 2006

Romain Jeanty
Primary Examiner
Art Unit 3623